within the terms of a statute forbidding a physician to disclose information acquired in visiting a patient. Hooker and Grant, JJ., *dissenting*.

If laws of a beneficial order require it, and are not contrary to the law of the land or to public policy, members must exhaust their remedy in the order before resorting to the courts. *Weigand v. Fraternities Accidental Order*, 97 Md. 443; *Schon v. Sotoyome Tribe*, 140 Cal. 254. *Contra, Whitney v. National Masonic Ass'n.*, 52 Minn. 378. Rules of an order declaring that decisions of its tribunal shall be final do not preclude a suit at law. *Ry., Passenger and Freight Conductors' Ass'n. v. Tucker*, 157 Ill. 194; *Daniher v. Grand Lodge, A. O. U. W.*, 10 Utah, 110. *Contra, Road v. Ry., Passenger and Freight Conductors' Ass'n.*, 31 Fed. 62. Action of a tribunal of an order, in determining status of a member, in absence of bad faith and if rules of the order are reasonable, is not subject to review by the courts. *Crook v. High Court*, 162 Ill. 298; *Wolsey v. Odd Fellows Lodge*, 61 Iowa 492. Findings of a tribunal are not vitiated because technical rules of evidence are violated. *Barker v. Great Hive Ladies of Modern Maccabees*, 98 N. W. 24 (Mich.). Held, in *Sperry's Appeal*, 116 Pa. St. 391, that rejection of testimony that should have been admitted at hearing before tribunal, was not ground for interference by the courts. Thus it would seem that courts review findings of fraternal tribunals because of rights which courts have to try such causes, regardless of the rules of the order, rather than because of some error in the proceedings of the tribunal, as was the ground of review in this case.

LATERAL SUPPORT—APPROPRIATION OF LAND—DAMAGES TO ABUTTING PROPERTY.—KANSAS CITY NORTHWESTERN R. CO. V. SCHWAKE, 78 PAC. 431, (KAN.).—*Held*, that, since the actionable wrong for impairment to lateral support is not the excavation, a land owner does not sustain damages for the deprivation of lateral support until there is an actual subsidence of the soil. Mason and Burch, JJ., *dissenting*.

The doctrine followed in this case is of modern origin. It was first declared in *Backhouse v. Bonomi*, 9 H. L. Cas. 503, which practically overruled *Micklin v. Williams*, 10 Exch. 259, and was finally established in *Mitchell v. Colliery Co.*, 11 App. Cas. 127, where the question is exhaustively discussed. These cases have been generally followed in the United States. *Schultz v. Bower*, 57 Minn. 493; *R. Co. v. Harlin*, 50 Neb. 698; *Smith v. Seattle*, 18 Wash. 484. The theory upon which they rest is that the excavation will not necessarily result in injury, since until there is a subsidence of the soil the excavation may be repaired.

LIFE INSURANCE—ASSIGNMENT OF POLICY—INSURABLE INTEREST.—GORDON V. WARE NAT. BANK, 132 FED. 444.—*Held*, that an assignment of a life insurance policy to one who has no insurable interest in the life of the assured is valid, if not made as a cover to a wager.

A life insurance policy is not strictly a contract of indemnity, and at common law the insured was not required to have an insurable interest in the life. The statute of 14 Geo. III. necessitated an interest at the inception of the contract, but this necessity, it was held, did not attach to an assignee; *Ashley v. Ashley*, 3 Sim. 149; unless the assignment were a mere cover for a wager. *Wainwright v. Bland*, 1 M. & Rob. 481. A *dictum* in *Stevens v. Warren*, 101 Mass. 564, led to the Indiana doctrine that the assignee must have an interest. This has been denied in Massachusetts and in most of the states,

lately in Indiana itself. The position which the Supreme Court has taken is uncertain. Justice Field in *Warnock v. Davis*, 104 U. S. 775, endorses the Indiana doctrine, and in *N. Y. Mutual Life Ins. Co. v. Armstrong*, 117 U. S. 591, 597, he apparently holds the same view.

TRADE—UNFAIR COMPETITION—USE OF SIMILAR SURNAME.—VAN HOUTEN V. HOOTON COCOA & CHOCOLATE CO., 130 FED. 600.—Defendant, a corporation named after its founder Hooton, in good faith manufactured and sold "Hooton's Cocoa" by use of which name confusion in trade resulted to the damage of complainants, makers of the well known "Van Houten's Cocoa." *Held*, that such liability to confusion and deception was ground for granting an injunction against the defendants' use of said name unless accompanied by a clear statement distinguishing its cocoa from complainants'.

The basis for relief in unfair competition is fraud. *Gorham Mfg. Co. v. Dry Goods Co.*, 104 Fed. 243; *Day v. Webster*, 49 N. Y. Supp. 314. The use in good faith of one's name in connection with an article offered for sale is generally held justifiable and damage resulting to another from similarity of surnames is *damnum absque injuria*. *Brown Chemical Co. v. Meyer*, 139 U. S. 540; *Nat'l Starch Mfg. Co. v. Duryea*, 101 Fed. 117; *Harson v. Hallyard*, 22 R. I. 102; *Hazelton Boiler Co. v. Hazelton Tripod Boiler Co.*, 142 Ill. 494.

USURY—PROMISSORY NOTE—LEX LOCI CONTRACTUS.—WHITLOCK V. COHN ET AL., 80 S. W. 141, (ARK.).—*Held*, that the place of payment of a promissory note will not be regarded as determining the place of the making of the contract so as to render the contract usurious, since the parties will not be presumed to have contracted with reference to a law which will make the contract illegal.

It is now well settled that where the place of the making of the contract and the place of performance are the same, its validity as regards usury is determined by the law of that jurisdiction and not by the law of the place where the suit is brought. *Merchants' Bank v. Griswold*, 72 N.Y. 472; *Philadelphia Loan Co. v. Towner*, 13 Conn. 249. But when the contract is made in one state and payment is to be made in another, there is much conflict among the authorities. In some jurisdictions it is held without reserve that the law of the place of performance must govern. *Bennett v. Eastern Building & Loan Association*, 177 Pa. St. 233; *People's Building & Loan Association v. Tinsley*, 96 Va. 322. In Massachusetts the rule is that the law of the place of execution and payment of the consideration will control. *Akens v. Demond*, 103 Mass. 318; *Glidden v. Chamberlin*, 167 Mass. 486. In the Federal courts and in many of the state courts, it is held, as in the present case, that the intention of the parties is the controlling factor. *Miller v. Tiffany*, 1 Wall. 298; *Wayne Co. Savings Bank v. Lowe*, 81 N. Y. 566; *Pancoast v. Travellers Ins. Co.*, 79 Ind. 172.